TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1936

No. 103

DISTRICT OF COLUMBIA, PETITIONER,

vs.

ETHEL CLAWANS

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

PETITION FOR CERTIORARI FILED JUNE 8, 1936.

CERTIORARI GRANTED OCTOBER 12, 1936.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1936

No. 103

DISTRICT OF COLUMBIA, PETITIONER,

vs.

ETHEL CLAWANS

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

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1 In the Police Court of the District of Columbia

May Term, A. D. 1935

THE DISTRICT OF COLUMBIA, *ss:*

E. Barrett Prettyman, Esq., Corporation Counsel, by Edward M. Welliver, Assistant Corporation Counsel, who for the District of Columbia prosecutes in this behalf in his proper person, comes here into Court, and causes the Court to be informed, and complains that Ethel Clawans, late of the District of Columbia aforesaid, on the 24th day of March, in the year A. D. nineteen hundred and thirty-five, in the District of Columbia aforesaid, and divers other days and times between that date and the date of the filing of this information, did then and there engage in the business of dealer in second-hand personal property, to-wit, did then and there engage in the business of selling the return or other unused portions of railroad tickets, the same evidencing the right of the purchaser, holder, or possessor thereof, to be transported by railroad from one state or territory of the United States, or from the District of Columbia, to any other state or territory of the United States, or to the District of Columbia, wihout first having obtained a license so to do.

Contrary to and in violation of an Act of Congress in such case made and provided, and constituting a law of the District of Columbia.

E. BARRETT PRETTYMAN,
Corporation Counsel.

Personally appeared Earl L. Simonds and Walter H. Axline this 10th day of May, A. D. 1935, and made oath before me that the facts set forth in the foregoing information are true, and those stated upon information received he believes to be true.

(Signed) E. M. WELLIVER,
Assistant Corporation Counsel in and for the District of Columbia.

Filed May 13, 1935. F. A. Sebring, Clerk of Police Court,
2 D. C.

Bond 500.00. W—HQ. Schuldt, Judge. No. 1085464. tion. District of Columbia vs. Ethel Clawans. Asst. C. C. Curran & Welliver. Violation act of Congress.

Witnesses: Earl R. Simmons, P. R. R.; Mrs. E. R. Simmons, P. R. R.; Chester Brazier, P. R. R.; Walter H. Axline, B. & O.; Samuel M. Leonberger, B. & O.

May 13, 1935.—P. N. G. Cont'd to 5/22/35, 10:30, P. J. H.—J. P. McM.

May 18, 1935.—Hearing on Motion set for 5/22/35.

May 22, 1935.—Motion for Bill of Particulars overruled. Exceptions noted. Motion to Vacate heard; Briefs to be filed. Cont'd to 5/29/35.

May 29, 1935.—Motion to Vacate Service overruled. Exceptions allowed. Cont'd to 6/6/35.

Defendant failed to appear for trial; unsworn statement by physician filed. Case set for trial 6/6/35. Atty. for Deft. notified in open

court that defendant must appear for trial on day set or furnish satisfactory evidence of her inability to appear.

June 6, 1935.—Atty. Simon H. Broder allowed by Court to withdraw as defendant's counsel, with the consent of the defendant. Atty. Davidson assigned by the Court. Defendant refused to accept service of the counsel assigned.

June 6, 1935.—Affidavit of prejudice filed. Motion overruled. Exceptions noted.

June 6, 1935.—Atty. T. E. O'Connell assigned by the Court to represent defendant. Defendant refused counsel's services. Atty. Allen assigned by the Court. Defendant refused the services of the counsel.

June 6, 1935.—Cont'd to 6/7/35. Request of defendant.

June 7, 1935.—Atty. Lillian Clawans entered appearance for motions only.

June 7, 1935.—Judgment guilty. Exceptions noted and notice given of intention of filing motion for a new trial. Cont'd to 6/13/35.

6/11/35.—Motion for new trial filed. Cont'd to 6/22/35.

6/12/35.—Affidavit of Sadie Frank filed. Affidavit of Arthur A. Cohen filed.

June 16, 1935.—Motion for Bill of Particulars, and Motion to Vacate Service filed. Set for hearing 5/18/35. I. R.

June 22, 1935.—Cont'd to 7/6/35, request of Defense. Atty. L. Clawans ill.

July 6, 1935.—Motion for new trial overruled.

July 6, 1935.—$300 or 60 days.

July 6, 1935.—Exceptions noted and notice given of intention of applying to the Court of Appeals for writ of error.

Bond, $500 or $500 cash. Cont'd to 7/12/35.

July 12, 1935.—Bill of Exceptions submitted.

July 24, 1935.—Cont'd to 8/5/35. 1st continuance. Bill of Exceptions to be signed.

8/5/35.—Request of Government for extension of ten days for signing of bill of exceptions granted. Cont'd to 8/15/35.

Aug. 16, 1935.—Bill of exceptions to be signed. 2nd continuance.

Oct. 21, 1935.—Bill of exceptions settled, signed, sealed, and filed.

3 In the Police Court of the District of Columbia

DISTRICT OF COLUMBIA

vs.

ETHEL CLAWANS

Motion for bill of particulars

Now comes Ethel Clawans, defendant in the above-entitled cause, by her attorney, appearing specially, and moves for a bill of particulars of the alleged violation of law, for the following reasons:

1. The times of the alleged offence are not set forth with sufficient particularity, being set forth as on and after March 24, 1935, and up to May 10, 1935.

2. The place of the alleged offence is not set forth with sufficient particularity, being set forth as at the District of Columbia.

3. The person or persons with whom the said defendant is alleged to have carried on the business, alleged to have been engaged in by the defendant, are not specified.

4. And for other reasons apparent on the fact of the record.

Therefore, defendant moves for a bill of particulars to enable her to offer proper defense, as due her under the law.

(Signed) SIMON H. BRODER,
Attorney for defendant.

Washington, D. C., May 15, 1935.

Copy served on the Corporation Counsel of the District of Columbia by registered mail May 15, 1935.

Motion to be set for hearing at 10 A. M. Saturday, May 18, 1935. 5/16/35.

(Signed) E. WELLIVER, *Asst. C. C.*

4 No. 1085464. In the Police Court of the District of Columbia. District of Columbia vs. Ethel Clawans. Motion for Bill of Particulars. Simon H. Broder, Attorney for defendant, Earle Bldg., Washington, D. C. Filed May 16, 1935. F. A. Sebring, Clerk of Police Court, D. C.

5 DISTRICT OF COLUMBIA

vs.

ETHEL CLAWANS

In the Police Court of the District of Columbia

DISTRICT OF COLUMBIA, *ss:*

Now comes Ethel Clawans, by her Attorney, Simon H. Broder, and moves that service of the warrant on her, in the case of District of Columbia vs. Ethel Clawans, be set aside and declared void, for the following reasons:

1. The offense of which the defendant, Ethel Clawans, is accused, to wit, engaging in the business of dealer in second hand personal property at the District of Columbia without first having obtained a license so to do, as set forth more fully in the Information on record in the above Court, is not treason, a felony, or a breach of the peace, being merely a misdemeanor.

2. Section 372 of Title 24 of the Code of the District of Columbia provides, inter alia, as follows: "No person or persons, upon the Lord's day, shall serve or execute any writ, process, warrant, order, judgment, or decree, shall be void to all intents and purposes what- the peace) but the service of every such writ, process, warrant, order, judgment or decree, shall be void to all intents and purposes whatsoever."

3. The warrant of arrest was served by Detective Sergeant W. J. Liverman on Sunday, May 12, 1935, which day of the week is otherwise known as the Lord's day, on Ethel Clawans, the defendant in the above-entitled case, as will appear from the warrant and the Information.

For the foregoing reasons, defendant prays that the said service of the warrant be set aside, vacated, and declared void and of no effect.

(Signed) SIMON H. BRODER,
Attorney for Defendant.

Washington, D. C., May 15, 1935.

Copy served on the Corporation Counsel of the District of Columbia by registered mail May 15, 1935.

Motion to be set for hearing at 10 A. M. Saturday, May 18, 1935.

Service acknowledged this 16th day of May, 1935.

(Signed) E. WELLIVER.

6 No. 1085464. In the Police Court of the District of Columbia. District of Columbia vs. Ethel Clawans. Motion to Vacate Service. Simon H. Broder, Attorney for Defendant, Earle Building, Washington, D. C. Filed May 16, 1935. F. A. Sebring, Clerk of Police Court, D. C.

7 MILTON M. LILIEN, *M. D.*,
Maple & Grumman Aves., Hillside, N. J., May 28, 1935.

To whom it may concern:

Miss Ethel Clawans is ill and confined to her bed. She has been under my care for some time suffering most severe backaches and hip pains.

In addition headaches are present which cause patient to stay entirely in bed.

D. W. LILIEN.

8 In the Police Court of the District of Columbia

No. 1085464

DISTRICT OF COLUMBIA

vs.

ETHEL CLAWANS, *defendant*

Affidavit of prejudice

DISTRICT OF COLUMBIA, *ss:*

ETHEL CLAWANS, being first duly sworn on oath according to law, deposes and says that she is the defendant in the above entitled cause, and that it is about to be placed for trial before Judge Gus A. Schuldt, of the Police Court. This affiant protests the trial of her case before him and asks that it be tried before some other Judge of the Police Court, for the reason that Judge Gus A. Schuldt is prejudiced against her. He has shown this prejudice on several occasions in the trial of a previous case before him in which she was a defendant in the month of December 1934, in which his conduct and attitude was openly hostile toward her, and he took no pains to hide his feelings. She was being charged with uttering words unchastity against one Thelma Blith, and finally, a new trial was granted her, which is still pending. The case already had previously resulted in a disagreement by another jury. In the same case he

permitted the District Attorney to secure numerous continuances over her objections, although she had out-of-town witnesses and out-of-town attorneys, to defend her in the trial of the case, and thereby caused her great expense and inconvenience. This attitude of his persisted in spite of a statement of an Assistant District Attorney, David L. Hart, who told the said Judge in open court, that in his opinion the affiant was not guilty of that particular charge. This affiant honestly feels that therefore she cannot get a fair trial in the present case before Judge Gus A. Schuldt.

(Signed) ETHEL CLAWANS.

Subscribed and sworn to before me this 6th day of June 1935.

(Signed) WM. A. NORGREN,
Chief Deputy Clerk.

9 No. 1085464. District of Columbia *vs.* Ethel Clawans, defendant. Affidavit of Prejudice. Proper person.
Filed June 6, 1935. F. A. Sebring Clerk of Police Court, D. C.

10 In the Police Court of the District of Columbia

No. 1085464

DISTRICT OF COLUMBIA

vs.

ETHEL CLAWANS

Motion for new trial

Now comes the above named defendant, Ethel Clawans, and moves the Court to grant her a new trial herein, upon the grounds, and for the reasons following:

1. The verdict of the Court is contrary to the evidence.
2. The verdict of the Court is contrary to the weight of the evidence.
3. The verdict is contrary to law.
4. There is no legal evidence to support the verdict of the Court.
5. The verdict of the Court is based upon improper evidence.
6. The rights of the defendant were prejudiced by the refusal of the Court to grant her motion for a continuance in order to enable her counsel to prepare himself for the trial.
7. The rights of the defendant were prejudiced by the refusal of the Court to grant her motion for a continuance on the ground of absence of witnesses.
8. The rights of the defendant were prejudiced by the refusal of the Court to grant her motion for a continuance on the ground her counsel was engaged in a matter before another Court.
9. The Court erred in not dismissing the warrant in this case as having been illegally executed in accordance with the Code of Laws of the District of Columbia, Section 372 of the Code.

11 10. The Court erred in not permitting the prosecuting witnesses to testify on cross examination as to where they obtained their description of Ethel Clawans, the defendant.

11. The Court erred in not permitting prosecuting witnesses to testify on cross examination as to whether they came to Washington, D. C. to identify Ethel Clawans as per-arrangement, yet the Court compelled defendant's witnesses to answer on cross examination by assistant corporation counsel as to whether they came to Washington, D. C. by pre-arrangement.

12. The Court erred in permitting Miss Cecilia Adams to answer in cross examination by assistant corporation counsel questions which were not testified on direct examination for the defendant, Ethel Clawans.

13. The Court erred in not granting defendant's motion for a directed verdict at the conclusion of the prosecution's case.

14. The Court erred in not granting defendant's motion for a directed verdict at the conclusion of the entire case.

15. The Court erred in not granting defendant's motion supported by an affidavit of prejudice to certify the above entitled case to another Judge.

16. A new trial should be granted to defendant upon the ground that she has new discovered evidence, as shown by affidavits hereto annexed, which she could not have discovered by the exercise of due diligence.

17. And for other errors apparent of record.

(Signed) ETHEL CLAWANS.

To the Corporation Counsel, District of Columbia, and Edward Welliver, Esq., Assistant Corporation Counsel, Office of the Corporation Counsel of the District of Columbia, Washington, D. C.

12 Please take notice that the foregoing and annexed motion for a New Trial will be for hearing in the Police Court of the District of Columbia Saturday, June 22nd, 1935 at ten o'clock A. M. or as soon thereafter as counsel can be heard.

(Signed) ETHEL CLAWANS.

Service accepted.

13 No. 1085464. In the Police Court of the District of Columbia. District of Columbia vs. Ethel Clawans. Ethel Clawans, In Pro. Per. 1060 Broad Street, Newark, N. J. Filed June 11, 1935. F. A. Sebring, Clerk of Police Court, D. C.

14 In the Police Court of the District of Columbia

No. 1085464

DISTRICT OF COLUMBIA
vs.
ETHEL CLAWANS

Affidavit

DISTRICT OF COLUMBIA, *ss:*

SADIE FRANK, of full age, being duly sworn according to law, deposes and says:

That she resides in the City of Washington, D. C., for a long period of time.

That on the 28th day of April 1935, at or about 3:30 P. M., she was at Union Station, Washington, D. C., and had occasion to see a

relative off for New York City and remained at said railroad station until train excursion left for New York City, while there she saw Lillian Clawans and made inquiries about Ethel Clawans, she was informed that Ethel Clawans was in the City of Newark, N. J., very ill. That she was talking continuously with Lillian Clawans who was with several people until she went through the gate and left on the excursion train for Newark, N. J.

Further she saw a short stockily built woman approach Lillian Clawans for tickets to New York City to which Miss Lillian Clawans directed her to the ticket window, that she saw this stockily built woman approach several people in the concourse for tickets to New York City.

(Signed) SADIE FRANK.

Subscribed and sworn before me this 12th day of June 1935.

(Signed) E. PERCIVAL WILSON,
Notary Public D. C.

My commission expires January 16, 1937.

15 Filed June 12, 1935. F. A. Sebring, Clerk of Police Court, D. C.

16 In the Police Court of the District of Columbia

No. 1085464

DISTRICT OF COLUMBIA
vs.
ETHEL CLAWANS

Affidavit

DISTRICT OF COLUMBIA, *ss:*

ARTHUR A. COHEN, of full age, being duly sworn according to law, upon his oath deposes and says: That he is a resident of City of Washington, D. C.

On the 28th day of April 1935 he was at Union Station, Washington, D. C., and he saw Lillian Clawans, whom he mistook for Ethel Clawans; while there he saw a short stout woman with glasses at or about 4:00 P. M. approach Miss Lillian Clawans for return excursion tickets to New York City, New York, to which Miss Lillian Clawans replied, why ask me for tickets when there is others you can get them and furthermore the ticket window will sell you all you want.

That this woman insisted in getting the tickets from Lillian Clawans and said Miss Lillian Clawans said, "Will you quit annoying me, otherwise I will have you reported to the police."

Further he saw this woman make purchase of tickets from others in the concourse of Union Station on that day.

(Signed) ARTHUR A. COHEN.

Subscribed and sworn to before me this 11th day of June 1935.

(Signed) I. ROBERTSON,
Deputy Clerk, Police Court, D. C.

17 Filed June 12, 1935. F. A. Sebring, Clerk of Police Court, D. C.

18 In the Police Court of the District of Columbia

No. 1085464

DISTRICT OF COLUMBIA

vs.

ETHEL CLAWANS

Bill of exceptions

Be it remembered that at the trial of this case before Judge Gus A. Schuldt, which began on June 6th, 1935 and thereafter was further proceeded with.

The defendant, Ethel Clawans, appeared specially and advised the Court that a Motion to Quash service was made, the Court instructed defendant to plead to the information, to which defendant took an exception to the Court's ruling overruling motion to quash. Defendant filed an affidavit of prejudice setting forth her grounds disqualifying Judge Gus A. Schuldt from sitting in the trial of this case, whereupon Judge Schuldt overruled same, to which defendant took an exception. Whereupon Judge Gus A. Schuldt ordered the witnesses to the witness room, defendant took an exception, the right to a hearing in open court.

The defendant pleaded not guilty to an information charging that on the 24th day of March, 1935, and on divers other dates, between that date and the date of the information she engaged in the business of an unlicensed second-hand dealer without first having obtained a license so to do.

The defendant demanded a jury trial, which Judge Schuldt denied, the defendant took an exception.

19 Thereupon, the District of Columbia, to maintain the issues upon its part joined, gave evidence by the witnesses hereinafter named, as follows:

AUTWINE C. BAXIER, a negro, being first duly sworn, testified in substance as follows:

He resides at 1724 Christian Street, Philadelphia, Penna., that he is employed with the Railway Inspecting Company, as an investigator, that on the 24th day of March 1935, in the presence of one Joseph Hector, who resides at 349 Halsey Street, Newark, N. J., he purchased a return ticket to New York City for $1.50 from defendant, that he made the purchase at 9:28 a. m. on the 24th day of March 1935.

The witness was asked in cross examination whether Joseph Hector was in court, the court instructed witness not to answer, to which the defendant took an exception. The witness was asked whether he wants the court to believe that defendant as white person approached him out of a clear sky and asked him to buy a return ticket to New York City when there were about three thousand people at Union Station as he testified in direct examination, to which the Judge instructed witness not to answer, to which defendant took an exception. Witness was asked whether he did not make a purchase from some

other person on that day; his answer was "Yes"; the Court instructed witness not to answer, but defendant advised the court, it was too late for the court to rule on that as the witness had already answered. Witness was asked whether he wants the Court to believe that defendant took the $1.50 out of his hands as he so testified in direct examination, the court instructed witness not to answer, to which the defendant took an exception. Witness was asked whether Ethel Clawans was at Union Station, or any where in Washington, D. C., he was to make a buy from her, to which the witness answered "Yes." Mr. Edward M. Curran, assistant corporation counsel, objected, but he raised his objection too late, as the witness had already answered. Defendant asked the witness, as a matter of fact you purchased the ticket from some one else, to which the witness replied "Yes."

Mrs. Evelyn R. Simmons, being duly sworn, testified in substance as follows:

She is employed by the Railway Inspection Company, in the capacity of an investigator, and has been in the employ of the Railway Inspection Co. since 1908. On the 7th day of April 1935 she and her husband approached the defendant and bought two tickets to New York City, N. Y.; that defendant told her she expected some friends to come off the excursion train and that she would let her have the tickets; witness paid $3.00. On the 28th day of April 1935 she approached the defendant at 2:55 P. M. for four tickets, but was only able to get one ticket, for which she paid $1.50. Witness said the transaction took place in the presence of her husband, Mr. Axline, and Leaburger. Witness came over to the defendant at 2:55 P. M., put her arms around the defendant so that defendant would not be suspicious, in order to get the ticket.

On cross-examination witness was asked whether she made a buy from anyone else, and she replied "Yes", to which Mr. Curran, assistant corporation counsel, objected, and to which the defendant advised the court witness had already answered, and that Mr. Curran was too late in raising his objection. Witness was asked whether Miss Ethel Clawans was there or not, she was going to make a purchase, to which she replied "Yes", and again assistant corporation counsel Curran was late in objecting. Witness was asked by the defendant who was present when she made the alleged purchase from the defendant, and she replied, her husband, but could not remember whether anyone else was present, in spite of the fact in her direct examination she testified her husband, Mr. Axline, and Mr. Leaburger were present. Witness was asked whether she came to Washington, D. C., by pre-arrangement, to which Judge Schuldt instructed witness not to answer, to which the defendant took an exception. Witness was asked what was the condition of the weather on the 28th day of April 1935, and she replied by informing the court it was raining very hard all day; but when she was told by the defendant the weather was clear she was unable to answer. Defendant asked the witness what time of the day did she reach Washington, D. C., on the 7th day of April and April 28th, 1935, the days the alleged purchases were made, the court instructed witness not to answer, to which defendant took an exception. Wit-

ness was asked to give the address of the Railway Inspection Co., which she informed the court she was not allowed to tell; the defendant insisted that witness be compelled to answer, to which witness refused to reveal, and defendant informed the court the witness was not responsive, to which the court advised the defendant witness had answered, to which the defendant took an exception.

EARL R. SIMMONS, being duly sworn, testified in substance as follows:

He is the husband of Mrs. Evelyn Simmons and is employed by the Railway Inspection Company since 1906. He was present when his wife made a purchase of return excursion tickets at Washington,
D. C., but did not see the money pass on the 7th day of April
21 1935, though he was with her at time of the alleged purchase.
Defendant told him if he waited until the excursion train arrived he could get a ticket to New York City; that she expected several friends off the train.On the 28th day of April 1935, he was unable to get four return tickets, although witness approached the defendant to secure same, but that his wife succeeded in getting one from the defendant.

On cross examination witness was asked whether the defendant wasn't pointed out to him, to which the Court instructed witness not to answer, to which the defendant took an exception. Witness was asked whether he came down to Washington, D. C., by pre-arrangement, to which the defendant took an exception. The witness was asked whether he came down to Washington, D. C., to make a purchase from Ethel Clawans, whether she was there or not, to which the witness nodded, when Mr. Curran, assistant corporation counsel, objected, to which the defendant advised the Court Mr. Curran was too late, the witness had answered by his nod. Witness was asked whether he made purchase from any one else, the Court instructed witness not to answer, to which the defendant took an exception. Witness stated that it was a clear day on the 28th day of April 1935. The Court instructed witness not to answer when asked what time of the day did he arrive in Washington, D. C., on the 7th day of April 1935, and 28th day of April 1935, to which defendant took an exception. Witness was asked who was present when the money was passed, to which he stated his wife, Mr. Leaburger, and Mr. Axline. Also was asked whether Mr. Leaburger and Mr. Axline were known to him, the court instructed witness not to answer, to which the defendant took an exception. Where his residence was, to which the court instructed witness not to answer, to which defendant took an exception. Witness was asked whether he knew the defendant is
about to file a suit against the Pennsylvania Railroad as a
23 result of an accident which occurred on the 4th day of November 1934, to which the Court instructed witness not to answer, to which defendant took an exception.

WALTER H. AXLINE, being duly sworn, testified in substance as follows: His occupation is Lt. Police for the Baltimore and Ohio Railroad and that on the 28th day of April 1935, he was present at Union Station, Washington, D. C., when a purchase was made by Mr. and Mrs. E. R. Simmons, but that he did not see the money pass, but

heard the defendant say she had only one ticket and let the cripple man have it. That he saw the defendant for the first time on that day at 3:48 P. M. and did not see her at any other time. On cross-examination the witness was asked whether the weather was clear on the 28th day of April 1935, to which he replied the weather was clear on the 28th day of April 1935. The witness was asked whether he made a purchase from any one else, to which the witness was instructed by the court not to answer, defendant took an exception. The witness was asked whether the defendant was pointed out to him, and his answer was that Mrs. Simmons had pointed the defendant out to him. Further the defendant asked the witness if he had any trouble in knowing the defendant as the defendant was representing herself in the trial of this case, witness was instructed not to answer, to which the defendant took an exception. Witness advised the defendant he must have four tickets, and not to disappoint them, witness was asked whether he saw the defendant before that date, Mr. Curran objected, to which the court instructed witness not to answer and sustained the corporation counsel's objection, to which the defendant took an exception. Witness has been in the employ of the Baltimore and Ohio Railroad in the capacity of railroad police for nineteen years. Witness was asked how he knew that the
24 defendant knew who the cripple man was as he testified in direct examination, that they were all standing at the time purchase was alleged to have been made, his answer was he did not know.

SAMUEL L. LEABURGER, being duly sworn, testified in substance as follows:

He is employed in the capacity of Lt. Police for the Baltimore and Ohio Railroad Company, and that on the 28th day of April, 1935, Mrs. Evelyn Simmons introduced him to the defendant and asked the defendant for a ticket to New York City, New York, to which the defendant informed him she did not have any tickets, but would phone some one to see if she could get any. He did not succeed in getting a ticket nor did he see any money pass for tickets. Witness was asked on cross-examination whether he knew the defendant was about to institute suit against the Pennsylvania Railroad for injuries she suffered on the 4th day of November, 1934, Court instructed witness not to answer, to which defendant took an exception. Witness was asked whether he knew the Claims Agent in Washington, D. C., had offered the defendant a settlement and that she advised claims agent the settlement would take place in court, the court instructed witness not to answer, to which defendant took an exception. The witness was asked whether he knew Mrs. and Mrs. E. R. Simmons before the meeting on the 28th day of April, 1935, and whether they came to Washington, D. C., by prearrangement, to which the court instructed witness not to answer, to which defendant took an exception.

Sergeant LIVERMAN, being duly sworn, testified in substance as follows:

He is employed with the Metropolitan Police Dept. in Washington, D. C., and that he made the arrest on the 12th day of May, 1935,

on Sunday at 6.30 A. M. in presence of several friends of the
25 defendant, while she was sitting with them on the front bench facing the Postal Telegraph Office with her luggage. That he arrested her on a warrant for being an unlicensed second-hand dealer. He was asked on cross-examination whether he was assigned to homicide cases and how did he happen to make the arrest of the defendant for the violation of second-hand dealer, when he was not assigned to such cases, he was unable to answer.

Mrs. FARRELL, being duly sworn, testified in substance as follows: She is a policewoman and employed by the metropolitan police department, that she was present when the arrest of the defendant was made on Sunday May 12th, 1935, at Union Station, Washington, D. C. On cross examination she was asked whether Mr. Liverman showed the defendant the warrant, to which she replied, she did not know. Further, she was asked, isn't true, as a matter of fact that Mr. Liverman, the arresting officer, did not show the defendant the warrant of arrest, to which the court instructed witness not to answer, to which defendant took an exception.

Following the testimony of Mrs. Farrett the government rested its case.

Thereupon, the defendant moved the court for a directed verdict on the ground that the District of Columbia witnesses were inconsistent in their testimony, the evidence was flimsy, and that the District of Columbia failed to make out a prima facie case, that the six purchases alleged to have made for a period of three months even if were true did not constitute an unlicensed second-hand dealer and that the arrest was illegal. The court overruled the motion, to which the defendant took an exception.

Edward Curral, assistant corporation counsel made a motion
26 that all District of Columbia's witnesses be excused from further attendance in the trial of this case, to which the defendant objected, and the court overruled defendant's objection, to which the defendant took an exception. Judge Schuldt ordered that the defendant return and proceed with the trial at 10.00 A. M. on the 7th day of June, 1935.

Whereupon, Judge Schuldt after the completion of the morning business with the trial about 11:45 A. M. on the 7th day of June 1935 ordered the witness to the witness *to the witness* room.

Thereupon to maintain the issues on her part joined, defendant produced the following witnesses.

SAMUEL CLAWANS, being duly sworn, testified in substance as follows:

The defendant, had been ill since February 1935 and confined to her home until the early part of May 1935. The defendant was in receipt of a letter from a patient in Washington, D. C., pleading with her to come and get him out of said hospital, that defendant left to take said patient out of hospital for his home in Bloomfield, N. J. The defendant had not left her home in Newark, N. J., since the early part of May 1935. On cross examination the witness was asked by the assistant corporation counsel whether witness was positive the defendant had not left her home from February 1935 to the early part of May 1935, to which witness replied he was cer-

tain, that he resided at the same residence of the defendant and saw her several times a day during that period, it was a physical impossibility for her to be in Washington, D. C., during the months of February, March, April, and the early part of May 1935, as she was critically ill and under the care of a doctor.

Miss CECELIA ADAMS being duly sworn, testified in substance as follows:

She has known the defendant about three years, she is employed in the capacity of a cashier and clerk for Lanzner
27 Shoppe, in Newark, N. J. On the 24th day of March 1935, she was at the home of Miss Lillian Clawans, and at the request of Miss Lillian Clawans, while there she saw Ethel Clawans very ill and confined to her bed. Witness testified she was at the home of the defendant on the 28th day of March 1935, April 1st, 7th, and the 14th day of April 1935, she knows that those days were the days because they fell out on Sunday with the exception of the 28th day of March and the 1st day of April 1935, as the 28th day of March 1935 was Miss Ethel Clawans birthday and she bought her a twenty five cent bouquet of flowers. That she resides in New Jersey. On cross examination witness testified that this was her first appearance in a court room, that she came to Washington, D. C., today being told she was coming to Washington, D. C., to secure a position with the government, that she did not know she was going to testify and she remembered the 24th day of March 1935 very clearly, because that was the day Miss Lillian Clawans left for Miami Beach, Florida, to be with her very sick mother, who already was in Miami Beach, Florida, that the defendant was sick and attended by a nurse.

ANDREW GALLA, being duly sworn, testified in substance as follows:

He resides in the City of Newark, N. J., and has lived there for some time. He is a plumbing contractor. Witness knows the defendant slightly, but knows Miss Lillian Clawans better. That on the 7th day of April 1935 he did some plumbing work at the residence of the defendant and saw her ill in bed. On cross examination he was asked whether he did not commence work on some other day, to which witness replied he started work on Saturday afternoon, and it was on the 6th day of April 1935 that he rushed
28 to get the supplies on Saturday afternoon and completed the work on the 7th day of April 1935. That the invoice for the supplies is now in his possession. That he saw the defendant at her home on the 7th day of April 1935, which was on a Sunday as he does not ordinarily work on Sunday.

JOSEPH CROWLEY, being duly sworn, testified in substance as follows:

He resides in Hillside, New Jersey, and has known the defendant for a great number of years. That he did not know what he was going to Washington, D. C., and he did not know until a few moments ago he was to appear in court this morning. On cross-examination witness testified the defendant resided in the City of Newark, N. J., and that he had a quarrel with the defendant eight months ago. That he came to Washington, D. C., today in auto.

LILLIAN CLAWANS, being duly sworn, testified in substance as follows:

On the 24th day of March 1935 witness left for Miami Beach, Florida, on the 5.47 P. M. train from Newark, N. J., to be with her sick mother who was in Miami Beach, Florida, and that she remained away until the 14th day of April 1935. Witness testified that she is a teacher, accountant, and counsellor-at-law, a member of the Court of Appeals of the District of Columbia, and has been admitted to the United States Supreme Court. That she arrived at Miami Beach, Florida, on the 26th day of March 1935 and registered at the Hotel Liddo. That on the 28th day of April 1935 a stockily built woman approached her and put her arms about her neck and asked her for four tickets to New York City, New York, to which the witness replied right over there is the ticket window, you can get all the tickets you want, what is the big idea of
29 approaching me for tickets and that she saw this woman approach several people at Union Station and that occurred about 4.00 P. M. just as she was about to board a train for Newark, N. J. That on the 28th day of April 1935 she came to Washington, D. C., to see a member of the bar of the District of Columbia, who gave her a worthless check and came down for the one day only. On cross examination witness was asked whether she had employed the services of Miss C. Adams and what amount was she paid for her services, to which the defendant objected, as it was immaterial and irrelevant, the court instructed the witness to answer, to which the defendant took an exception. Witness further testified on the 28th day of April 1935, a Mr. Murphy, of the Baltimore and Ohio Police, pointed her out. On cross examination witness was asked by Mr. Curran, assistant corporation whether the witness in the defendant's case did not come down to Washington, D. C., to testify by pre-arrangement, to which the defendant objected and the court overruled the objection and instructed the witness to answer, to which the defendant took an exception, the witness replied of course not.

MADELINE MUELLER, being duly sworn, testified in substance as follows:

She resides in the City of Washington, D. C., and has lived in Washington, D. C., for more than twenty years. Witness knows the defendant for seventeen years. She is a buyer and operates several millinery shops in Washington, D. C. That she knows from her own personal knowledge that the defendant was not in the City of Washington, D. C., on the 28th day of April 1935 and has not been in the City of Washington, D. C., since 2nd day of February 1935 until the 12th day of May 1935, when she came to the women's bureau to get the defendant out. That she knows the defendant was very ill in the City of Newark, N. J., from February to
30 early part of May 1935. That she saw the defendant at the women's bureau at or about 8.00 A. M. on the 12th day of May 1935, and on said date she was at detective headquarters and overheard the detective headquarters men thrilled that they had arrested the defendant and they were making a joke out of it. Witness testified she was in Court on the morning of June 6th, 1935, and saw a man whom she later learned was Mr. Murphy, of the

Baltimore and Ohio Railroad, point the defendant out to several of the District of Columbia's witnesses before the trial commenced. That witness overheard how these witnesses were going to railroad the defendant, to which Mr. Curran objected and the court sustained the objection, to which the defendant took an exception in spite of the fact that defendant advised the court that Mr. Curran was late in objecting that witness had already answered, and the court instructed not to tell any more what occurred in the court room on the morning of the 6th of June 1935. Witness testified that at headquarters she informed the lieutenant what was the big idea of arresting the defendant, that she came to get a sick man out of a hospital in Washington, D. C., and to take him home to his home in Bloomfield, N. J., and the very idea of charging her with being unlicensed second hand dealer, also the lieutenant informed her if she did not get her out Sunday May 12th, 1935, that to-morrow the bail would be increased from five hundred dollars to one thousand dollars cash bail. On cross examination she was asked when did she see the defendant for the first time since February 1935, in Washington, D. C., and she informed the court on the 12th day of May 1935, at the women's bureau. Witness also testified she saw the defendant at her home in Newark, N. J., ill on several of her trips to purchase merchandise for her business in the months of February, March, and April 1935.

21 RALPH WALLACE, being duly sworn, testified in substance as follows:

He resides in the City of Washington, D. C., for a great number of years and has known the defendant for some time. That he knows the defendant was critically ill and confined to her bed in the City of Newark, N. J., from February 1935 to the early part of May 1935. Witness testified he saw the defendant for the first time in the City of Washington, D. C., on the morning of May 12th, 1935, when he was advised she was arrested and at the women's bureau, that on the 12th day of May 1935, he was at detective headquarters and heard several detective men make a joke out of the arrest of the defendant and the witness remarked to the lieutenant at the desk that the conduct of the men should be reported to a committee, that it is an outrage to frame the defendant, which they have done in this case, particularly when she came to Washington, D. C., to get out a sick man to bring him back to his home in New Jersey, that this man was in a Washington, D. C. hospital. On cross examination he was asked how long has he known the defendant, to which he replied for a number of years and that he visited the defendant at her home during the months of February, March, and April 1935. That he goes to New York City frequently on buying trips, and that Newark, N. J., is about eight miles this side of New York City, N. Y. That he knows the defendant was very ill at her home in Newark, N. J., from February 1935 to the beginning of May 1935.

Mr. L. JOHNSTON, being duly sworn, testified in substance as follows:

He is employed by the metropolitan police department, in the capacity of a second hand and pawn broker inspector. He has been

employed in that capacity for more than two and half years
32 and he is the only inspector assigned to that work. That he is familiar with the rules and regulations regarding the reports of second hand dealers and pawn brokers and laws governing same. Second hand dealers and pawn brokers are compelled to make daily reports to the police department; that he produced the form they are required to use and submit to the department. The witness was shown six tickets which were offered in evidence and was asked whether in course of his inspection he came in contact with any of those unused portions excursion tickets among second hand dealers or pawn brokers, to which witness replied, "No", and that those tickets did not come within the second hand dealers' license as they were compelled to hold merchandise for ten days and that these tickets were good only on the date of purchase and would not be acceptable for transportation ten days later.

EDWARD M. WELLIVER, being duly sworn, testified in substance as follows:

He resides in the City of Washington, D. C., and has been in the employ of the corporation counsel office as an assistant corporation counsel for some time. That some time in April 1935, one Goldstein was arrested and brought in with forty-eight return excursion tickets to New York City, New York, and that the case against said Goldstein was dismissed. Mr. Curran, assistant corporation, objected, but the witness had already answered, so the defendant advised the court.

The defendant moved for a directed verdict of acquittal, upon the following grounds, first, that the District of Columbia failed to make out a case, the evidence did not warrant a conviction, the arrest was illegal, to which the court overruled the motion and the defendant took an exception. The Court then and there imposed the sentence of $300.00 fine or sixty days in jail.

33 The foregoing is the substance of all the testimony bearing upon the exceptions herein reserved on behalf of defendant.

And whereupon, and as all of said exceptions were duly noted and excepted and allowed as aforesaid and duly entered upon the minutes of the court, and because the matters and things hereinbefore recited are not matters of record, in order to make same a part of the record herein, which is hereby ordered, so that the defendant may have her case reviewed on appeal, the defendant moves the court to sign, and seal this, her bill of exceptions, to have the same force and effect as if each and every one of said exceptions has been separated, signed and sealed, which motion is granted by the court, and thereupon the defendant tenders this, her bill of exceptions, and requests the court to sign and seal the same, which is accordingly done, now for then, this 21st day of October, A. D. 1935.

(Signed) GUS A. SCHULDT,
Judge, Police Court.

34 In the Police Court of the District of Columbia. No. 1085464. District of Columbia vs. Ethel Clawans. Bill of exceptions. Ethel Clawans, 1060 Borad Street, Newark, N. J. October 21, 1935. Bill of exceptions settled, signed, sealed, and filed.

35 In the Police Court of District of Columbia

Holding a District Court

No. 1085464

DISTRICT OF COLUMBIA

v.

ETHEL CLAWANS

Request for continuance

The Government hereby requests a further extension of 10 days for the signing of the Bill of Exceptions in the above entitled case, for the reason that Mr. Edward M. Curran, who handled this matter is out of the city on a vacation.

(Signed) EDWARD M. WELLIVER,
Assistant Corporation Counsel,
Police Court, D. C.

Request granted:

(Signed) GUS A. SCHULDT, *Judge.*

36 Filed Aug. 5, 1935. F. A. Sebring, Clerk of Police Court, D. C.

37 In the Police Court of the District of Columbia

DISTRICT OF COLUMBIA

vs.

ETHEL CLAWANS, IN P. P., 1060 BROAD STREET, NEWARK, N. J.

Request for continuance for signing the bill of exceptions

The government hereby respectfully requests that the time for the signing of the Bill of Exceptions in the above entitled cause be extended for ten days (10), until the return of Mr. Curran from his vacation.

Respectfully submitted.

(Signed) EDWARD M. WELLIVER,
Assistant Corporation Counsel, D. C.,
Police Court.

38 In the Court of Appeals of the District of Columbia

DISTRICT OF COLUMBIA

vs.

ETHEL CLAWANS

Petition for further extension of time within to file bill of exceptions

Comes now the defendant in the above entitled case and moves this Honorable Court to extend further time within which to file

bill of exceptions, to and including the 14th day of October 1935, and for reasons therefor shows as follows:

1. That Judge Schuldt has failed to sign bill of exceptions submitted by the defendant nearly three months ago.

2. That the corporation counsel by one of his assistants, Edward M. Welliver, secured two continuances.

3. That the defendant has made six trips to Washington, D. C., solely for the purpose of Judge Schuldt to sign, seal bill of exceptions.

4. That defendant will be irreparably damaged and lose her right of appeal to this Honorable Court without an extension of time granted by this Court to seek relieve therein.

5. WHEREFORE, the premises considered, it is respectfully prayed than an ORDER be passed in this case extending the time within which to file the bill of exceptions to and including the 14th day of October 1935.

(Signed) ETHEL CLAWANS.

Service of the foregoing petition is acknowledged this 23rd day of September 1935.

39 No. ——. In the Court of Appeals of the District of Columbia. District of Columbia vs. Ethel Clawans. Petition for further extension of time within to file bill of exceptions. Ethel Clawans, 1060 Broad St., Newark, N. J.

40 In the Police Court of the District of Columbia

No.

DISTRICT OF COLUMBIA

vs.

ETHEL CLAWANS

Assignment or error

Now comes the defendant in the above-entitled case and assigns as errors committed in the course of the trial relied upon as grounds for reversing the conviction complained of herein, as follows:

The court erred:

1. In refusing to grant defendant's motion to quash service of a warrant of arrest made on the Lord's day, May 12th, A. D. 1935, for being an unlicensed second hand dealer.

2. In ordering the court room cleared and denying defendant the right to proceed in her defense in open court.

3. In demanding defendant to plead to an information.

4. In denying defendant's motion to assign case to another judge on the ground he was biased and prejudiced.

5. In refusing defendant's motion for a continuance in order to enable her to obtain counsel of her own choice, and prepare for trial.

6. In denying defendant's motion for a jury trial.

7. In instructing the prosecution witness Autwine Bazier not to answer on cross-examination the following question: "Do you want

the Court to believe that the defendant approached you out of a clear sky in the presence of about three thousand people and asked you to buy a return trip ticket to New York City, said witness having testified there were about three thousand people in Union Station at the time?"

8. In instructing prosecution witness Autwine Bazier
41 not to answer the following question, "Did you not make a purchase from some one else on that day?" and his answer was "Yes." The witness had already answered before the Court so instructed him not to answer.

9. In instructing said witness not to answer the following question, "Do you want the Court to believe that defendant took $1.50 out of your hand as witness so testified?"

10. In instructing the prosecution witness Mrs. Evelyn R. Simmons not to answer the following question, "Did you come down to Washington, D. C., by pre-arrangement?"

11. In instructing the witness Mrs. Evelyn R. Simmons not to answer the following question, "What time of day did you reach Washington, D. C., on the 7th day of April 1935, and 28th day of April 1935?"

12. In instructing witness for the prosecution, Earl R. Simmons, not to answer in cross-examination the following question. "Was the defendant pointed out to you?"

13. In instructing said witness not to answer in cross-examination the following question, "Did you come down to Washington, D. C., by prearrangement?"

14. In instructing said witness not to answer the following question on cross-examination, "Did you make a purchase on that day from anyone else?"

15. In instructing witness on cross-examination not to answer the following question, "What time of the day did you reach Washington, D. C., on the 7th day of April 1935, and 28th day of April 1935?"

16. In instructing Earl R. Simmons not to answer on cross-examination the following question, "Were Mr. Leaburger and Mr. Walter Axline known to you?"

17. In instructing the witness not to answer, "Where is your residence?"

42 18. In instructing said witness not to answer on cross examination the following question, "Did you know that the defendant was about to file a suit against the Pennsylvania Railroad as a result of an accident on the 4th day of November 1935?"

19. In instructing the prosecution witness, Walter Axline, not to answer the following question on cross examination, "Did you make a purchase from any one else on the 28th day of April 1935?"

19. In instructing the witness, Walter Axline, not to answer the following question on cross examination, "Did you see the defendant before the 28th day of April 1935?"

20. In instructing the witness not to answer the following question on cross examination, "You had no trouble in knowing the defendant, as she represented herself in the trial of this case?"

21. In instructing the prosecution witness, Samuel Leaburger, not to answer the following question in cross examination, "Did you

know that the defendant was about to bring a suit against the Pennsylvania Railroad as a result of an accident for injuries sustained on the 4th day of November 1935?"

22. In instructing said witness not to answer the following question on cross examination, "Did you know that the claims agent in Washington, D. C., had offered a settlement for her injuries she sustained on the 4th day of November 1935, and that the defendant refused the settlement of the case and advised she would settle with him in court?"

23. In instructing the witness, Mr. Leaburger, not to answer the following question, "Did you know Mr. & Mrs. E. R. Simmons before meeting them on the 28th day of April 1935?"

24. In instructing the witness not to answer on cross exam-
43 ination the following question, "Did you come down to Washington, D. C., with Mr. & Mrs. E. R. Simmons and Walter Axline by pre-arrangement?"

25. In instructing the witness, Sergeant Liverman, not to answer the following question on cross examination, "Isn't it true as a matter of fact you did not show the defendant the warrant of arrest on Sunday, May 12th, 1935?"

26. In not directing a verdict of acquittal at the conclusion of the prosecution's case.

27. The prosecution moved at the conclusion of the District of Columbia's case that all witnesses be excused from further attendance in the trial of this case, to which the defendant objected, the court erred in overruling said objection.

28. In overruling the objection of the defendant to the following question of the defendant's witness Lillian Clawans, "How much did you pay Miss C. Adams for her services?"

29. In overruling the defendant's objection to the question asked by the Assistant Corporation Counsel Curran on cross examination of the defendant's witness, Lillian Clawans, "Did you come down to Washington, D. C., by pre-arrangement?"

30. In striking out the following testimony of defendant's witness Madeline Mueller over the objection of the defendant, "I was in Court room on the 6th of June 1935 and saw a man whom she later learned was Mr. Murphy, of the Baltimore and Ohio Railroad Police, point the defendant out to several of the witnesses that testified for the prosecution before trial commenced and heard these witnesses state they were going to railroad the defendant."

31. In denying defendant's motion for a directed verdict at the conclusion of the entire case.

30A. In admitting evidence offered by the prosecution over the objection of the defendant.

32. In denying motion for a new trial.

44 33. In imposing sentence on the 7th day of June 1935 as follows: $300.00 and sixty days in jail, and thereafter modifying said sentence to $300.00 and ninety days in jail.

34. In refusing $500.00 cash bail after tendering same and imprisonment defendant 2½ hours before accepting $500.00 cash bail.

35. And for other errors apparent on the fact of the record.

(Signed) ETHEL CLAWANS.

Service of a copy of the foregoing assignment of errors acknowledged this 9th day of September 1935.

(Signed) G. D. NEILSON,
Asst. Corp. Counsel.

46 In the Police Court of the District of Columbia

No. 1085464

DISTRICT OF COLUMBIA

vs.

ETHEL CLAWANS

Information for violation act of Congress

Date		Proceedings
1935		
May	13	Information filed.
		Plea: Not Guilty—Cont'd to May 22, 1935.
"	16	Motion for Bill of Particulars and Motion to Vacate Service filed. Set for hearing May 18, 1935
"	18	Hearing on Motion set for May 22, 1935.
"	22	Motion for Bill of Particulars overruled. Exceptions noted. Motion to Vacate heard: briefs to be filed.
		Continued to May 29, 1935.
"	29	Motion to Vacate Service overruled. Exceptions allowed.
		Cont'd to June 6, 1935.
		Defendant failed to appear for trial: unsworn statement by physician filed. Case set for trial June 6, 1935. Attorney for Defendant notified in open court that defendant must appear for trial on day set, or furnish satisfactory evidence of her inability to appear.
June	6	Attorney Simon H. Broder allowed by Court to withdraw as defendant's counsel, with the consent of the defendant. Attorney Davison assigned by the Court. Defendant refused to accept service of the counsel assigned.
		Affidavit of prejudice filed. Motion overruled. Exceptions noted.
June	6	47 Attorney T. E. O'Connell assigned by the Court to represent defendant. Defendant refused counsel's services. Attorney Allen assigned by the Court. Defendant refused the services of the counsel.
		Continued to June 7, 1935. Request of defendant.
"	7	Attorney Lillian Clawans entered appearance for motions only.
"	7	Judgment guilty. Exceptions noted and notice given of intention of filing motion for a new trial.
		Continued to June 13, 1935.
"	11	Motion for new trial filed. Continued to June 22, 1935.
"	12	Affidavit of Sadie Frank filed. Affidavit of Arthur A. Cohen filed.
"	22	Continued to July 6, 1935. Request of defense. Attorney L. Clawans ill.
July	6	Motion for new trial overruled.
		Sentence: $300.00—60 days.
		Exceptions noted and notice given of intention of applying to the Court of Appeals for writ of error.
		Bond: $500.00 or $500.00 cash. Continued to July 12, 1935.
"	12	Bill of Exceptions submitted.
"	24	Continued to Aug. 5, 1935. First continuance.
		Bill of exceptions to be signed.
Aug.	5	48 Request of Government for extension of ten days for signing of bill of exceptions granted; Continued to Aug. 15, 1935.
"	16	Bill of exceptions to be signed. Second continuance.
Sep.	9	Assignment of Error filed.
Oct.	21	Bill of exceptions settled, signed, sealed and filed.
Nov.	18	Copy of record and proceedings in this case, together with writ of error, transmitted to Court of Appeals in obedience to said writ.

NOVEMBER 18, 1935.

I hereby certify under the seal of this Court, that the foregoing is a true copy of the records of the proceedings had in the Police Court in the above-entitled case.

[SEAL]

WM. A. NORGREN,
Acting clerk, Police Court, D. C.

49 UNITED STATES OF AMERICA, *ss:*

The President of the United States

To the Honorable GUS A. SCHULDT,
Judge of the Police Court of the District of Columbia.

GREETING: BECAUSE in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Police Court, before you, between District of Columbia, Plaintiff, and Ethel Clawans, Defendant, Information No. 1085464, a manifest error hath happened, to the great damage of the said Defendant as by her complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Court of Appeals for the District of Columbia, together with this writ, so that you have the same in the said Court of Appeals, at Washington, within 15 days from the date hereof, that the record and proceedings aforesaid being inspected, the said Court of Appeals may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

WITNESS the Honorable George E. Martin, Chief Justice of the said Court of Appeals, the 11th day of November, in the year of our Lord one thousand nine hundred and thirty-five.

[SEAL] HENRY W. HODGES,
Clerk of the United States Court of Appeals for the District of Columbia.

Allowed by
D. LAWRENCE GRONER,
Associate Justice of the United States Court of Appeals for the District of Columbia.

50 Police Court of the District of Columbia. No. 1085464. District of Columbia vs. Ethel Clawans. Violation act of Congress.

51 (Endorsed:) In Error to the Police Court of the District of Columbia. No. 6601. Ethel Clawans, plaintiff in error, vs. District of Columbia. United States Court of Appeals for the District of Columbia. Filed Nov. 18, 1935. Henry W. Hodges, Clerk.

52 Monday, April 6th, A. D. 1936

* * * * * * *

No. 6601

ETHEL CLAWANS, PLAINTIFF IN ERROR

vs.

DISTRICT OF COLUMBIA

The argument in the above entitled cause was commenced by Mr. Seth W. Richardson, attorney for plaintiff in error, and was con-

tinued by Mr. Raymond Sparks, attorney for defendant in error, and was concluded by Mr. Seth W. Richardson, attorney for plaintiff in error. Plaintiff in error is allowed to file reply brief in five days. (Mr. Justice Robb not sitting.)

53 United States Court of Appeals for the District of Columbia

No. 6601

ETHEL CLAWANS, APPELLANT

v.

DISTRICT OF COLUMBIA, APPELLEE

Appeal from the Police Court of the District of Columbia

Argued April 6, 1936—Decided May 11, 1936

Seth W. Richardson, of Washington, D. C., for appellant.
E. Barrett Prettyman, Corporation Counsel, D. C., Edward M. Curran, and Raymond Sparks, all of Washington, D. C., for appellee.

Before MARTIN, C. J., and VAN ORSDEL, GRONER, and STEPHENS, JJ.

GRONER, *J.:* Appellant was convicted in the police court of the District of Columbia of a violation of an Act of Congress of July 1, 1902, as amended by an Act approved July 1, 1932 (47 Stat. 550, ch. 366, sec. 7, paragraphs 39, 47, and 48), and sentenced to pay a fine of $300.00 or to confinement in jail for sixty days. Appellant, when arraigned, claimed the right to a jury trial in accordance with the provisions of Article III, sec. 2, cl. 3, of the Constitution, providing that "The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury;". The right was denied, and the District of Columbia now insists that no constitutional privilege of appellant was invaded because of Title 18, Sec. 165, of the 1929 District of Columbia Code (16 Stat. 153, ch. 133; 26 Stat. 848, ch. 536; 31 Stat. 1196, ch. 854; 43 Stat. 1120, ch. 443, sec. 4), providing summary trial by a magistrate.

This last mentioned Act was passed for the government of the District of Columbia and provides that prosecutions in the police court shall be on information; that where the accused would be entitled to a jury trial under the Constitution, trial shall be by a jury unless waived; and that in cases where the accused would not by force of the Constitution be entitled to trial by jury, trial shall be by the court without a jury, unless, in cases where the fine or penalty may be more than $300.00 or imprisonment more than ninety days, the accused shall demand a trial by jury, in which case the trial shall be by jury.

The offense charged in the information was that appellant was engaged in the business of dealer in the return portions of railroad excursion tickets, contrary to the provisions of the Act of Congress approved July 1, 1932 (supra).

54 Paragraph 39 of that Act declares that dealers in second-hand personal property, including the return or other unused portion of any ticket, order, or token purporting to evidence the

right of the holder or possessor thereof to be transported by any railroad or other common carrier, from one state or territory of the United States or the District of Columbia, to any other state or territory of the United States or to the District of Columbia, shall pay a license tax of $50.00 per annum.

Paragraph 48, that any person violating the provisions of the Act "shall upon conviction be fined not more than $300 or imprisoned for not more than ninety days."

The answer to the question we have to decide depends, as we shall point out, upon whether the nature of the offense and the punishment prescribed bring it within the class of offenses described as "petty" in Schick v. United States, 195 U. S. 65.

In the Schick case—a prosecution by criminal information for violation of a section of the oleomargarine law punishable by a fine of $50.00—the Supreme Court said that, "So small a penalty for violating a revenue statute indicates only a petty offense", and held that in such circumstances there is no constitutional requirement of a jury.

On the other hand, in Callan v. Wilson, 127 U. S. 540—a prosecution for common law conspiracy—the defendant was charged with having, through an association of musicians, boycotted one of the members of the association and deprived him of his right to pursue his calling and trade. The defendant, in a summary proceeding and without a jury, was fined $25.00, and on petition for habeas corpus the Supreme Court held that the denial of a jury trial was a violation of his constitutional rights—because the offense charged was an indictable offense at common law.

And in District of Columbia v. Colts, 282 U. S. 63, a defendant charged with reckless driving in the streets of the city of Washington and sentenced to 30 days in jail was held entitled to a jury trial, also on the ground that the offense was indictable at common law.

In the two last mentioned cases the Supreme Court said that the provisions of the Constitution with relation to jury trial are to be read and interpreted in the light of the common law, and, as we have seen, held in each case that, since the offense charged was triable at common law only by jury, the constitutional provisions were violated by trial without one.

Obviously if the sole criterion is—whether the offense was triable only by jury at common law—the conviction here would have to stand, for the offense charged here was, perhaps, unknown to the common law. Also, if the test is whether the punishment which may be imposed is of a kind and nature which could be imposed in summary proceedings at the time of the adoption of the Constitution, the conviction would likewise have to stand; for the most casual examination of the history of the English criminal law from the time of James I to the time of our Revolution—and, as well, the history of criminal procedure in most of the American Colonies—shows unmistakably that summary proceedings, involving even severer punishments than the maximum provided under the statute in question, were not then uncommon. For example, many offenses not
55 only punishable by fines, but those also in which corporal punishment or imprisonment might be imposed, were both in England and in the Colonies tried solely by magistrates. Violations of laws relating to liquor, trade and manufacture, smuggling, traffic

on the highways, the Sabbath, cheats, gambling, swearing, small thefts, assaults, offenses to property, servants, and seamen, vagabondage, and disorderly conduct, were all in England by acts of Parliament offenses triable without a jury. In New York in 1732 statutes were passed making triable before magistrates any misdemeanor, breach of the peace, or other criminal offense under the degree of grand larceny. Nearly the same provisions may be found in the laws of New Jersey and Maryland and Virginia. Citations to the statutes and instances of their application are collected at great length in an article in the Harvard Law Review of June 1926 (Vol. XXXIX); and other like instances are cited in State v. Glenn, 54 Md. 572, where the Court of Appeals of Maryland, in passing upon the right to trial by jury of a person charged with being an habitually dissolute person and sentenced to serve six months in a house of correction, said:

"In England, notwithstanding the provision in the Magna Charta of King John, Art. 46, and that of 9 Hen. 3, ch. 29, which declares that no freeman shall be taken, imprisoned, or condemned, 'but by lawful judgment of his peers, or by the law of the land', it has been the constant course of legislation in that kingdom, for centuries past, to confer summary jurisdiction upon justices of the peace for the trial and conviction of parties for minor and statutory police offences; and this jurisdiction has been largely increased and extended in modern times, as will be seen by reference to Burn's Justice, tit. Conviction; Bacon's Abr., tit. Justice of the Peace, and Paley on Summary Convictions, 5 Ed. Work-houses and Houses of Correction, principally occupied by parties convicted by justices of the peace, have been maintained, certainly from the days of Queen Elizabeth to the present, as parts of the police system of that country; and both the jurisdiction and the means of punishment are deemed essential to the good government and well being of society there, and it is not less so here."

(The Court then reviews some of the earlier colonial statutes and says—p. 603):

"These statutes have been in force here from our earliest history, and are still in force; and we are not aware that it has ever been supposed that their provisions were in any way restrained or controlled by the declaratory provisions in the Declaration of Rights. There are a great many statutes upon the statute book, relating to a great variety of subjects, prescribing fines, penalties, and forfeitures, as punishment, for doing or omitting to do certain things; and by many of those statutes jurisdiction has been given to justices of the peace, from whose judgments no appeal was provided for until within a comparatively recent period."

But we think that the decision of the question involves more than is embraced in either indictability at common law or the power of magistrates to impose jail sentences pursuant to colonial statutes. For, as was said by the Supreme Court in Weems *v.* United States, 217 U. S. 349, it must not be overlooked that time works changes and brings into existence new conditions and purposes, and therefore a principle, to be vital, must be capable of wider application than the mischief which gave it birth. This principle is, as we think, clearly recognized in the opinion of the Supreme Court in the Schick case. That case, like this, embraced an offense unknown

to either the people of England or the United States at the
56 time of the adoption of the Constitution; and the holding that the offense was petty was placed on the ground that the penalty for its commission made it so. And so, logically and consistently, the Supreme Court said as to other provisions of the same statute imposing severer penalties, that the violation of one of these was a "crime" triable only to a jury. This distinction is an acknowledgment of the fact that the practice at the time of the adoption of the Constitution is not the only factor to be considered. This, indeed, the Supreme Court has said in so many words, viz.:

"The truth is, the nature of the offense and the amount of punishment prescribed rather than its place in the statutes determine whether it is to be classed among serious or petty offenses, whether among crimes or misdemeanors." (Schick case, p. 68.)

The Colts case was decided a quarter of a century after the Schick case and, as we pointed out, turned exclusively on the nature of the offense. The statute provided only a maximum sentence of 30 days in jail, but this was held of no consequence since the offense itself was triable only by jury at common law. A fair inference, therefore, from the decisions in these two cases (Schick and Colts) is that the rule which the Supreme Court means to enforce is, first, that in all cases in which the offense charged is of a nature which at common law, as understood and practiced by our ancestors at the time of the adoption of the Constitution, was indictable and triable by a jury,—the trial now must be by jury unless waived; second, that in the case of offenses unknown to the common law or which then were regarded as petty, but which now Congress has declared shall be punished severely, the degree of punishment, rather than the nature of the offense, determines whether or not it is a crime within the constitutional limitations.

The offense with which we are here concerned is the breach of a municipal ordinance. It is an offense which, if known to the common law, was certainly regarded as petty,—an offense to which there is not attached any of the elements of moral turpitude. There is, therefore, nothing in the "nature of the offense" by which it may be characterized as a crime. It is of that class of cases described by Mr. Dillon in his work on Municipal Corporations (Vol. 1, Sec. 433), as falling within the description of municipal police regulations and which relate to acts and omissions not embraced in the general criminal legislation of the state. Such acts and omissions were regarded as innocent, or at least as trivial, one hundred and fifty years ago. Obviously, therefore, the doing of business without the payment of a license tax was not a crime within the contemplation of the makers of the Constitution or the people of the Colonies at the time of the adoption of the Constitution. And this brings us, then, to consider only the further question whether the extent of the punishment is so severe as to take the offense out of the category of "petty" and make it a "crime." As we have seen already, the statute permits a fine up to $300 or imprisonment up to ninety days in jail. The latter, that is to say, the right to impose a sentence of three months in jail by a magistrate without a jury, is the question on which the answer must turn. If, instead of three months in jail, the punishment provided were six months or a year, the problem would be simpler. So, also, if the punishment were, let us say, ten days in jail. The

57 difficulty is in applying the measuring rod to intermediate periods. As was suggested by the authors of the article in the Harvard Law Review to which we have made reference, the query is: When is far too far? All of which proves the unwisdom of attempting to deduce "from abstract principles any limiting definition of fundamental and constitutional rights." If Congress can deny or limit the right of jury trial in the District of Columbia, it can also deny and limit it wherever the jurisdiction of the United States extends, for the constitutional limitations apply in the District with the same force that they apply in the States. Callan *v.* Wilson, 127 U. S. 540; Downes *v.* Bidwell, 182 U. S. 244. And it is common knowledge that Congress never has attempted to confer jurisdiction on United States Commissioners or on the District Courts to try without a jury cases of the nature involved here. And in considering the question as applied solely to the District of Columbia, it is not amiss to refer to the fact that under the present statute there is not only a denial of jury trial but there is also no appeal of right to any superior court. The decision of the magistrate is final, unless upon application to this court we elect to exercise the power of review; and if we do, we are by rule confined to questions of law and may not weigh the evidence. In most of the States the mechanics of the law provide either a right of election on the part of the accused to be held over for trial in a court with a jury or an appeal of right to a higher court to review the judgment of the magistrate. The omission of either provision cannot and should not be lightly overlooked.

Viewed in this aspect, the penalty which may be imposed under the statute cannot be said to be petty or trivial. Laying aside the question of the right to impose a fine of $300, the right to imprison for three months involves a proposition of real seriousness. To inflict upon the accused, summarily, imprisonment in a common jail for that length of time, and at the same time to deny him of right an appeal to a court of record, is a matter which cannot be whistled down the wind with the statement that court business must go on—that dockets must be cleared—or that the requirements of jury service should not be expanded to the loss of the citizen in his private affairs. Nor is it any more an answer to say—as is not now uncommon—that the limitations and guaranties of the Constitution are now outworn or are unsuitable to the problems of government in the growth of population and the passing of time. That the guaranty of jury trial is, if it is, among the least of these, is not a reason for its abolition; nor does that fact justify whittling it down in civil and much less in criminal cases. It is still one of those immutable principles of justice which inhere in our conception of a free government; and it was doubtless this principle which induced the Supreme Court within the last year to say:

"Maintenance of the jury as a fact-finding body is of such importance and occupies so firm a place in our history and jurisprudence that any seeming curtailment of the right * * * should be scrutinized with the utmost care."—Dimich v. Schiedt, 293 U. S. at p. 486.

For these reasons, we are of opinion that the constitutional provisions with relation to jury trial apply, first, in all cases—especially in all cases where as here there is no election of right and no appeal of right—in which the offense charged was an indictable offense

58 under the common law, without regard to the measure of punishment; and, second, in all cases, without regard to the nature of the offense, where the punishment which may be inflicted under the statute involves a sentence as severe as confinement in jail for ninety days.

We have noted the other assignments and find them without substance. But, for denial of the right of jury trial, we are obliged to reverse and remand for a new trial.

Reversed.

A true copy.

Test:

Clerk of the United States Court of Appeals for the District of Columbia.

59 Monday, May 11th, A. D. 1936

* * * * * * *

No. 6601. April Term, 1936

ETHEL CLAWANS, PLAINTIFF IN ERROR

vs.

DISTRICT OF COLUMBIA

In error to the Police Court of the District of Columbia

This cause came on to be heard on the transcript of the record from the Police Court of the District of Columbia and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this Court that the judgment of the said Police Court in this cause be, and the same is hereby, reversed, and that this cause be and the same is hereby remanded to the said Police Court for a new trial not inconsistent with the opinion of this Court.

Per Mr. Justice GRONER.

MAY 11, 1936.

Mr. Justice ROBB took no part in the consideration or decision of this case.

60 In the United States Court of Appeals for the District of Columbia

January Term, 1936

No. 6601

ETHEL CLAWANS, PLAINTIFF IN ERROR

v.

DISTRICT OF COLUMBIA, DEFENDANT IN ERROR

The clerk will please prepare a transcript on application for certiorari to the Supreme Court of the United States in the above entitled cause, including therein the following:

1. The record in the Court of Appeals.
2. Minute entry showing argument of cause.
3. Opinion of the Court.
4. The judgment.
5. This designation.
6. Clerk's certificate.

VERNON E. WEST,
Acting Corporation Counsel, D. C.,
RAYMOND SPARKS,
Assistant Corporation Counsel, D. C.,
Attorneys for Defendant in Error, District Building.

Service of copy acknowledged this 12 day of May 1936.

SETH W. RICHARDSON,
Attorney for Plaintiff in Error.

61 No. 6601. Ethel Clawans, plaintiff in error, v. District of Columbia, defendant in error. Designation of record. United States Court of Appeals for the District of Columbia. Filed May 13, 1936. Moncure Burke, clerk. Vernon E. West, Raymond Sparks, attys. for defendant in error, District Building.

62 United States Court of Appeals for the District of Columbia

I, Moncure Burke, clerk of the United States Court of Appeals for the District of Columbia, hereby certify that the foregoing printed and typewritten pages numbered from 1 to 61, inclusive, constitute a true copy of the transcript of record and proceedings of the said Court of Appeals as designated by counsel for the defendant in error in the case of: Ethel Clawans, plaintiff in error, vs. District of Columbia, No. 6601, April Term, 1936, as the same remain upon the files and records of said Court of Appeals.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court of Appeals, at the City of Washington, this 14th day of May A. D. 1936.

[SEAL]

MONCURE BURKE,
Clerk of the United States Court of Appeals
for the District of Columbia.

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 12, 1936

The petition herein for a writ of certiorari to the United States Court of Appeals for the District of Columbia is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.